

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

(1) KENNETH B. JOHNSON JR.,

Defendant.

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SA-19-MJ-00226-ESC

ORDER

Before the Court in the above-styled cause of action are Defendant's Motion for 702/705 Hearing Regarding HGN [#14] and Defendant's Motion to Suppress the Results of the HGN Test [#15]. Defendant is accused of driving while intoxicated at Fort Sam Houston [#1]. By his motions, Defendant challenges the reliability of the horizontal gaze nystagmus test ("HGN test") administered to Defendant. Defendant asks the Court to set a hearing to evaluate the test under the standards set forth in Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

The Court held a hearing on the motions on June 19, 2019, at which both parties were present. After hearing argument, the Court informed the parties that it would grant the motion for a *Daubert* hearing and require the Government to establish the reliability of the HGN test's application in this case. However, because this case will be tried to the bench, the Court will hold the *Daubert* hearing during the bench trial.

IT IS THEREFORE ORDERED that Defendant's Motion for 702/705 Hearing Regarding HGN [#14] is **GRANTED**. The hearing will take place during the bench trial currently scheduled for July 12, 2019.

IT IS FURTHER ORDERED that Defendant's Motion to Suppress the Results of the HGN Test [#15] is **CARRIED** to trial.

SIGNED this 20th day of June, 2019.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE